BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-11-045 (Filed November 30, 2001)
In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996.	Application 01-12-026 (Filed December 20, 2001)

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FINAL ARBITRATOR'S REPORT

I. Background

On November 30, 2001, Global NAPs, Inc. (U 6449 C) (GNAPs) filed an application for arbitration of an interconnection agreement (ICA) with Pacific Bell Telephone Company (U 1001 C) (Pacific) pursuant to Section 252(b) of the Telecommunications Act of 1996 (Act or TA96). Formal negotiations between the parties commenced on January 19, 2001. As negotiations progressed, Pacific agreed to extend the closing date of the parties' arbitration window, making November 30, 2001 the date the arbitration window closed. Therefore, GNAPs' Petition was timely filed.

GNAPs agreed to negotiate the terms of an ICA based on Pacific's proposed "13-state" ICA. While there is no dispute over the vast majority of terms in the ICA, the parties have reached an impasse on 13 key issues. In its petition, GNAPs indicates that it discusses all key unresolved issues in detail, but states the petition does not identify all of the disputed language in the ICA. GNAPs requests that the Commission resolve the disputed issues on a policy level and affirmatively order the parties to implement contract language embodying this policy decision.

On December 26, 2001, Pacific filed its Response to GNAPs' application. In its Response, Pacific summarized its position on the 13 issues previously raised by GNAPs. Pacific also indicated that GNAPs' proposal that the Commission resolve disputed issues at a policy level is both impractical and contrary to law. Resolution ALJ-181 requires parties to identify the issues for which they request arbitration and propose contractual language to match. In its Response, Pacific

presents Pacific's proposed resolution of the 13 issues that are described in the Petition, with Pacific's proposed contractual language.

Similarly, on December 20, 2001, GNAPs filed an application for arbitration of an ICA with Verizon California Inc. f/k/a GTE California Inc. (Verizon) pursuant to Section 252(b) of the Act. GNAPs listed 11 unresolved issues.

Verizon filed a response to GNAPs' petition on January 14, 2002. Verizon responded to the 11 issues GNAPs raised, and added 3 others, for a total of 14 issues. Verizon points out, as did Pacific, that GNAPs articulates very narrow issues for arbitration, but proposes significant changes to the ICA, which are not mentioned in the Petition nor supported by testimony.

Conference calls were held on January 7 and January 15, 2002, to discuss the schedule for the case and to address various procedural issues. During the January 7, 2002 conference call, I, the arbitrator assigned to the proceedings, raised the issue of consolidating the two arbitration proceedings since many of the issues to be addressed were common to both. During the January 15, 2002 conference call with GNAPs, Pacific, and Verizon, I indicated my intent to consolidate the two arbitration proceedings and revised the hearing schedule. I also stressed that the Commission is not willing to make decisions at a policy level without resolving all dueling contract language.

GNAPs was ordered to make a Supplemental Filing on January 22, 2002. The filing included GNAPs' position on all areas where there is disputed language that was not addressed specifically in GNAPs' initial petitions. Pacific and Verizon filed their Supplemental Responses on February 1, 2002. An ALJ Ruling was issued on January 22, 2002 formally consolidating the two

proceedings and memorializing the procedural issues discussed during the January 15, 2002 conference call.

An arbitration hearing was held on February 11, 2002. Concurrent briefs were filed and served on March 8, 2002. The Draft Arbitrator's Report (DAR) was filed on April 8, 2002, disposing of the contested issues as set forth below. Comments on the DAR were filed on April 24, 2002 by GNAPs, Pacific, Verizon, and Pac-West Telecomm, Inc. (Pac-West). Pac-West is another CLEC, which is currently involved in an arbitration with Pacific. The comments have been taken into account as appropriate in finalizing the Arbitrator's Report, as set forth herein. The Final Arbitrator's Report (FAR) was filed and served on May 15, 2002.

Parties continued their negotiations up until the time of the hearing and resolved some issues in dispute. During the hearing, Pacific reported that only Issues 1-4 were still in dispute. Verizon reported that 12 issues, 1-5, 7-8, and 10-14 were still in dispute. Issues 1-4 are common to both Pacific and Verizon, while issues 5, 7-8, and 10-14 apply only to Verizon.

The most significant issues presented in this arbitration are:

1) Should either party be required to install more than one point of interconnection (POI) per Local Access and Transport Area (LATA)?
2) Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?
3) Should the ILECs' local calling area boundaries be imposed on GNAPs or may GNAPs broadly define its own local calling area?
4) Can GNAPs assign to its customers NXX codes that are "homed" in a central office switch outside of the local calling area in which the customer resides?

In the following discussion, I have combined Issues 1 and 2 and Issues 3 and 4 because they are so closely linked to make it difficult to discuss them separately.

GNAPs and Pacific shall file an ICA that conforms to the arbitrated decisions herein on May 22, 2002, while GNAPs and Verizon shall file their conformed ICA on May 29, 2002. Each party shall include a statement of whether the Agreement should be adopted or rejected by the Commission.

II. Disputed Issues

A. Issues 1 and 2

Issue1

Should either party be required to install more than one POI per LATA?

Issue 2

Should each party be responsible for the costs associated with transporting telecommunications traffic to the single POI?

GNAPs' Position

There appears to be agreement among the parties that GNAPs can physically interconnect at a single point in each LATA. The difference of opinion centers around which party is responsible for the costs associated with a single POI option.

GNAPS seeks to have each carrier be responsible for transport on its own side of the POI because imposing costs only on the CLEC is contrary to federal law. According to GNAPs, the two ILECs' proposals differ somewhat since Verizon draws a distinction between the POI, where the carriers physically interconnect, and the IP (interconnection point) which is where financial responsibility passes. While Verizon states that its Virtual Geographically

Relevant Interconnection (VGRIP) proposal is a compromise favorable to GNAPs, GNAPs disagrees, since underlying Verizon's proposal is the need for GNAPs to purchase transport from Verizon or some other carrier, or self-provision the transport.

Pacific's proposal offers carriers a single POI physically but establishes financial terms that hold those carriers responsible for transport across Pacific's network. GNAPs asserts that this is entirely contrary to federal law, which allows a carrier to choose its point of interconnection at any technically feasible point. GNAPs asserts that this issue has been addressed elsewhere, and the ILECs' position was rejected. In Pennsylvania, Verizon was willing to interconnect at the point designated by the CLEC but demanded that the CLEC interconnect at several additional points, as Pacific does. The Third Circuit rejected Verizon's demand explaining:

> To the degree that a state commission may have discretion in determining whether there will be one or more interconnection points within a LATA, the commission, in exercising that discretion, must keep in mind whether the cost of interconnecting at multiple points will be prohibitive, creating a bar to competition in the local service area. If only one interconnection is necessary, the requirement by the commission that there be additional connections at an unnecessary cost to the CLEC, would be inconsistent with the policy behind the Act.[1]

According to GNAPs, there is no difference between Verizon's demand that GNAPs interconnect at additional locations and Pacific's demand that GNAPs interconnect at additional locations or pay Pacific's transport charges.

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[1] GNAPs citing MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania, 271 F.3d 491, 517 (3rd Cir., 2001).

GNAPs rebuts Pacific's attempt to justify its position by using the FCC's approval of Verizon's Pennsylvania 271 application. According to GNAPs, while the FCC makes a distinction between the financial and physical aspects of interconnection, it has not made a final ruling on whether or how to allocate the financial responsibilities associated with interconnection. Indeed, the FCC states: "[t]he issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM."

According to GNAPs, Pacific's and Verizon's proposals are in direct contradiction of 47 C.F.R. 51.703(b), which reads as follows:

> A LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

The FCC explained the basis of this regulation in its Local Competition Order:

> We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS [Commercial Mobile Radio Service] provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. We therefore conclude that section 251(b)(5) prohibits charges such as those some incumbent LECs currently impose on CMRS providers for LEC-originated traffic. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and must provide that traffic to the CMRS provider or other carrier without charge. (Local Competition Order ¶ 1042.)

The Eighth Circuit upheld § 51.703(b), and following the Eighth Circuit's decision, the FCC's Common Carrier Bureau ruled that the bar on LEC

charges for completion of LEC-originated calls in § 51.703(b) also covered charges for certain facilities used by LECs to provide such services. In response to a request for clarification from several LECs, the then-chief of the Common Carrier Bureau, A. Richard Metzger, issued a letter saying that the LECs could not charge paging service providers for the cost of "LEC transmission facilities that are used on a dedicated basis to deliver to paging service providers local telecommunications traffic that originates on the LEC's network.[2]

GNAPS also states that if Pacific and Verizon are allowed to charge GNAPs for transport between the POI and the additional points they designate, they can only do so for the traffic originated on GNAPs' network. Moreover, as GNAPs' witness Lundquist testified, the additional transport costs incurred by the ILECs are *de minimis* and are declining.

GNAPs rebuts the ILECs' reliance of ¶199 of the Local Competition Order which states that a:

> Requesting carrier that wishes a technically feasible but expensive interconnection would, pursuant to section 251(d)(1), be required to bear the cost of that interconnection including a reasonable profit.

According to GNAPs, a clear reading of this passage shows that this section is referring to additional costs incurred by an ILEC if the CLEC chooses a technically difficult means of interconnection—not the cost of exchanging traffic, and GNAPs has proposed the least expensive possible of interconnection methods, a fiber meet point. The cost of paying for new facilities required for interconnection is shared by the ILEC and CLEC, and the cost of mid-span fiber

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[2] GNAPs citing Metzger Letter of December 30, 1997, 13 F.C.C.R. 184 (1997).

meets are shared, with each carrier paying the interconnection costs on their respective sides of the POI.

Despite the clear language in ¶199, Pacific asserts that the FCC meant that paragraph to refer to the economic cost of exchanging traffic at one point of interconnection versus multiple points of interconnection. But clearly the cost of interconnection is not synonymous with the cost to exchange local traffic.

According to GNAPs, each carrier should be responsible for transport on its own side of the POI to provide proper incentives. If GNAPs bears the ILECs' costs, they will have no incentive to control their transport costs. Rather, says GNAPs, each carrier should be responsible for transport on its own side of the POI because each party has transport costs, and due to its network topology, GNAP's costs are likely to be greater than those of the ILECs. GNAPs' witness Lundquist calculated the additional transport cost per minute to be $0.0000678 for Pacific and $.000094775 for Verizon. This is significantly lower than the charges Pacific and Verizon seek to impose on GNAPs, namely $0.002612 per minute for Pacific and $0.0055054 per minute for Verizon. According to GNAPs, those huge transport charges violate §§ 251(c)(2)(C) and (D) of the Act.

In addition, GNAPs proposed contract language for the following sections of its proposed ICA with Pacific relating to Issues 1 and 2:

- General Terms and Conditions (GT&C) § 1.1.98 "Point of Interconnection": GNAPs' proposed modification ensures that federal law dictates interconnection architecture and the associated cost responsibility from that chosen architecture.
- GT&C § 1.2.4 "Fiber Meet": GNAPs' proposed modification ensures that GNAPs can establish a single POI with Pacific, subject only to technical feasibility issues.

- Appendix Network Interconnection Methods (NIM) § 1.11: GNAPs clarifies that each party is financially and operationally responsible for all expenses relating to facilities on that carrier's side of the POI.
- Appendix NIM § 2.1: GNAPs clarifies that parties agree to no more than one POI per LATA and eliminates any uncertainty surrounding financial and operational responsibility surrounding interconnection facilities, and clarifies that the Access Service Request (ASR) process shall not be delayed.
- Appendix NIM § 2.2: GNAPs clarifies that the parties will establish one POI per LATA, and that parties will operate under such architecture unless and until GNAPs agrees to additional POIs.
- Appendix NIM § 2.3: GNAPs clarifies that the parties will continue to meet, as often as necessary, concerning the establishment of additional POIs.
- Appendix NIM § 2.4: GNAPs clarifies that each party is financially and operationally responsible for all expenses relating to sizing, operation, maintenance, and costs of transport facilities on that carrier's side of the POI.
- Appendix NIM §§ 3.1, 3.2, 3.4: GNAPs clarifies that the parties intend to utilize a fiber-meet-point method of interconnection, at any technically feasible point that GNAPs designates, and the parties do not intend to utilize physical or virtual collocation interconnection.
- Appendix NIM § 3.4.7: GNAPs explains that the parties agree to use the specific meet point interconnection architecture described in § 3.4.7.4.
- Appendix NIM § 4.1: GNAPs eliminates GNAPs' obligation to provide Pacific with excessive operational information (including forecasts) when providing written notice of its need to establish interconnection.

- Appendix NIM § 4.2: GNAPs eliminates unnecessarily burdensome requirements that GNAPs must satisfy prior to establishing interconnection with Pacific.
- Appendix NIM § 5.2: GNAPs eliminates references to outside documents such as tariffs to clarify that those documents will not unilaterally change the terms and conditions of interconnection.

In its Supplemental filing, GNAPs proposed the following arguments in support of its proposed contract language regarding Issues 1 and 2 in its ICA with Verizon:

- GT&C, Glossary § 2.66: GNAPs' proposed modification ensures that federal law dictates interconnection architecture and the associated cost responsibility arising from that chosen architecture.
- Interconnection § 2.1.1: GNAPs clearly defines single POI, establishes GNAPs' exclusive right to establish this point, and makes clear that GNAPs is not responsible for establishing additional POIs. GNAPs establishes that each party is responsible for transporting telecommunications traffic originating on its network to the POI at its own cost.
- Interconnection § 2.1.2: GNAPs clarifies the relationship between the POI established by GNAPs and the interconnection point (IP) legacy term employed by Verizon.
- Interconnection §§ 2.2.1.1, 2.2.1.2: GNAPs increases clarity with respect to the types of traffic that may ride on interconnection trunks and access toll connecting trunks, respectively.
- Interconnection § 2.2.3: GNAPs clarifies that GNAPs has exclusive authority with relation to establishing the POI and interconnection trunks.
- Interconnection § 2.2.5: GNAPs eliminates Verizon's arbitrary limit on the total number of tandem

interconnection trunks between the parties and eliminates a related non-symmetrical ordering requirement imposed upon GNAPs.

- Interconnection § 2.3.1: GNAPs clarifies that each party using one-way interconnection trunks must deliver such traffic to each other's POI and must deliver such traffic at its own expense or purchase transport. This modification makes collocation of Verizon facilities at GNAPs' POI conditional upon the consent by, and pursuant to terms and conditions imposed by, GNAPs. This modification also makes other elements of this language asymmetrical (as consistent with the Act's higher standard of interconnection rights of competing carriers). It also removes nonsymmetrical trunk utilization requirements imposed upon GNAPs by Verizon.
- Interconnection § 2.3.2: GNAPs eliminates language imposing facility or transport provision requirements upon Verizon for the delivery of traffic from Verizon to GNAPs.
- Interconnection § 2.4.3: GNAPs' proposed modification reflects GNAPs' exclusive right under federal law to designate the POI.
- Interconnection § 3.1: GNAPs' proposed modification establishes GNAPs' exclusive right to establish an end point fiber-meet arrangement, makes requirements for such an arrangement mandatory, and establishes that GNAPs need not designate more than one POI per LATA. GNAPs establishes that each party is responsible for transporting telecommunications traffic originating on its network to the POI at its own cost.
- Interconnection § 3.2: GNAPs indicates that end point fiber-meet arrangements will be treated in the same manner as other wireline interconnections and eliminates Verizon's requirements for agreement on procedures to govern such arrangements.

- Interconnection § 3.3: GNAPs' proposed modification is designed to clarify the nature of end point fiber-meet arrangements established between the parties. It eliminates Verizon's restrictions on the traffic that may ride over end point fiber meet arrangements. It adds a new section providing for 1) clearly defining the definition and purpose of such arrangements, 2) covering site selection, consistent with GNAPs' proposed single POI architecture, and terminal specification, 3) physical interface, 4) transmission characteristics, 5) disablement of the data communications channel between the parties, 6) firmware/software compatibility and upgrades, 7) inventory and provisioning, and 8) facility provisioning, maintenance, surveillance, and restoration.
- Interconnection § 5.2.2: GNAPs eliminates Verizon's unreasonable trunk ordering requirements.
- Interconnection § 5.3: GNAPs reiterates the requirements for interconnection at the POI and eliminates Verizon's overly restrictive provisions relating to subtending arrangements between tandem and end office switches.
- Interconnection § 7.1.1.1: GNAPs eliminates language that would require GNAPs to establish interconnection points in each Verizon local calling area and thereby violates GNAPs' right under federal law to establish a single POI per LATA.
- Interconnection § 7.1.1.2: GNAPs eliminates a Verizon provision that would allow Verizon to designate GNAPs' collocation sites at Verizon end-office wire centers as GNAPs' interconnection points, a requirement contrary to GNAPs' exclusive right to establish a single POI per LATA. This modification would also eliminate related dispute-resolution provisions.

- Interconnection § 7.1.1.3: GNAPs eliminates Verizon's dispute resolution provisions for disagreements between the parties regarding the POI, and a related cap on interim intercarrier compensation paid by Verizon to GNAPs, and instead allows the parties to pursue actions before the relevant state commission.
- Interconnection § 9.2.2: GNAPs' proposed modifications recognize GNAPS' sole discretion to establish access toll connecting trunks with interexchange carriers.

Pacific's Position

Pacific states that it does not require a CLEC to install more than one POI in a LATA. The only limitation Pacific suggests is that the network interconnection architecture plan should be developed by other parties and should seek to ensure that each party is financially responsible for about half of the interconnection facilities. Pacific states that the CLEC's designation of a single POI and its financial responsibility for the additional cost to the ILEC are two different issues. According to Pacific, no decision at the FCC, by this Commission, or of any court prohibits the ILEC from seeking compensation for the additional cost of a single POI.

In its recent decision on the Verizon Pennsylvania 271 application, the FCC confirmed that an ILEC is entitled to recover the cost of transport imposed on it by a single POI arrangement.

GNAP's witness Lundquist asserts that the FCC confirmed GNAPs position at paragraphs 70 and 72 of the Intercarrier Compensation NPRM.[3] In its

[3] Notice of Proposed Rulemaking, In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, FCC 01-132 (rel. April 27, 2001) "Intercarrier Compensation NPRM."

NPRM, the FCC expressly indicates that it has not addressed the issue of financial responsibility for a single POI. It requests comment on these questions:

> If a carrier establishes a single POI in a LATA, should the ILEC be obligated to interconnect there and thus bear its own transport costs up to the single POI when the single POI is located outside the local calling area? Alternatively, should a carrier be required either to interconnect in every local calling area, or to pay the ILEC transport and/or access charges if the location of the single POI requires the ILEC to transport a call outside the local calling area? (Intercarrier Compensation NPRM, ¶ 113).

According to Pacific, GNAPs' argument that FCC Rule 47 C.F.R. § 703(b) prohibits an ILEC from recovering the costs of transporting calls to a CLEC's single POI is misleading because upon reviewing this rule in 1997, the Eighth Circuit strictly limited its application to CMRS providers.[4]

Pacific asserts that the Commission should affirm what it said in D.99-09-029:

> A carrier may not avoid responsibility for negotiating reasonable intercarrier compensation for the routing of calls from the foreign exchange merely by redefining the rating designation from toll to local...A carrier should not be allowed to benefit from the use of other carriers' networks for routing calls to ISPs while avoiding payment of reasonable compensation for the use of those facilities. (D.99-09-029, mimeo, at 18.)

GNAP's witness Lundquist purported to calculate the additional transport cost that Pacific would incur under the single POI arrangement that

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[4] Iowa Utils. Bd. v. FCC, 120 F.3d 753, 800 n.21 (8th Cir. 1997), aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utilities Bd., 525 U.S. 366, 119 S.Ct. 721,142L.Ed. 2d 835 (1999).

GNAPs seeks. According to Pacific, Lundquist admitted that, under the single POI arrangement, the ILEC would incur additional costs for transporting calls beyond the local calling area and to the POI. Lundquist insisted, however, that such transport costs would be "de minimis." By his own admission, his study was based on arbitrary assumptions (such as using "the average traffic today for the incumbent," despite all the differences that he postulated between ILEC and CLEC networks and business strategies), erroneous data (such as the mixture of Pacific and Verizon wire centers), and a willful failure to collect data that might actually have been pertinent, (such as basic information about GNAPs' customers and network).

Pacific's witness Mindell testified that for those local calls that are made within a local calling area that does not support a tandem where GNAPs has a POI, GNAPs should pay TELRIC-based transport and tandem switching rates. This is based on the determination this Commission made in the AT&T/Pacific and Level 3/Pacific arbitrations.

Pacific's cost witness Pearsons testified that Pacific incurs costs for transporting calls beyond the local calling area. According to Pearsons, Lundquist's analysis was overly simplistic. Lundquist calculated average transport from the calling area to all points in the LATA, while what is at issue here is the additional costs incurred by GNAPs' traffic, not the average. Also, Lundquist's analysis did not reflect GNAPs' actual traffic and customer locations.

Pacific presented its position on the disputed contract language relating to Issues 1 and 2 as follows:

- GT&C POI Definition: Pacific's language is a functional description. Contrary to what GNAPs says, the definition of "meet point" at 47 C.F.R. § 51.5 says

nothing about cost responsibility. With that important qualification, Pacific would not oppose GNAP's change.

- GT&C "Fiber Meet" Definition: Nothing in Federal law gives a CLEC the unilateral right to designate a technically feasible point. The actual process is spelled out in 47 C.F.R. § 51.321. GNAPs' issue is not definitional. It creates substantive rights and obligations.
- NIM § 1.11: GNAPs would make each party financially responsible for all expenses relating to facilities on its side of the POI. As discussed above, this is not the law.
- NIM § 2: In its Response to the Petition for Arbitration, Pacific proposed a new Section 2 of Appendix NIM. GNAPs did not address Pacific's request in its Supplemental Filing. Pacific's offer is a reasonable way to allocate financial responsibility between Pacific and GNAPs. GNAPs would pay TELRIC-based charges for transport and, if applicable, tandem switching, only when Pacific's end user and GNAPs' POI are located within different tandem sectors and different exchanges. This is a considerable compromise by Pacific since a tandem sector is comprised of all local exchanges, the end offices of which are homed to that tandem. Pacific notes that GNAPs' proposed changes to the remainder of § 2 would impose all financial responsibility for a single POI arrangement on Pacific.
- NIM § 3.4.1: Pacific does not object to deleting methods of interconnection that GNAPs does not intend to use, but Pacific does object to the words "that GNAPs designates" in Section 3.4.1. Technical feasibility is not a matter of one party unilaterally "designating" a point. Such language takes away Pacific's right under Federal rules to evaluate whether interconnection at a particular point is technically feasible.
- NIM § 3.4.2: GNAPs does not say what is objectionable about this provision that the POI is for the provision of

interconnection trunking only, and not for access by the CLEC to loop plant or other services.

- NIM § 3.4.3: This section requires the Data Communications Channel be shut off, so that each party can control its own network. GNAPs does not say what is objectionable about this provision.
- NIM § 3.4.7 : Pacific does not object to GNAPs' statement that the parties agree to use the specific meet point interconnection architecture described in § 3.4.74. However, without explanation, GNAPs deletes language from the description of Design One 3.4.7.1.
- NIM § 4: GNAPs does not say what is excessive or burdensome or why. The only requirement GNAPs specifically mentions, forecasts, is non-binding. Pacific's proposal recognizes that certain technical information must be provided, discussed or agreed upon before interconnection is activated.
- NIM § 5: Pacific notes that the language GNAPs proposes to delete refers to interconnection in SBC-Ameritech and SNET. Thus, the deletion was not necessary, although Pacific does not object to its deletion.

Verizon's Position

Verizon's VGRIP proposal permits GNAPs to physically interconnect with Verizon at only one point on Verizon's existing network. GNAPs' proposed contract language associated with Issue 1, which interjects the Network Interface Device (NID) into the definition of the physical POI, is confusing.

According to Verizon, its VGRIP proposal equitably allocates the costs caused by GNAPs' interconnection decisions. GNAPs confuses its ability to select the point on Verizon's network at which the parties will physically exchange traffic with the ability to force Verizon to bear the additional incremental costs associated with that decision.

To ensure that Verizon does not bear all the additional incremental costs resulting from GNAPs' decision to establish only one physical POI in a LATA, Verizon should be able to differentiate between that physical POI and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the "interconnection point" or IP. A typical example involves designation of a GNAPs' collocation arrangement at a Verizon tandem wire center in a multi-tandem LATA as the financial demarcation point. In this example, this IP may be outside the originating calling area, in which case, Verizon would absorb some of the additional costs for transporting the call to that tandem. In this respect, Verizon's VGRIP proposal represents a significant compromise for both parties because both would bear a portion of the additional incremental costs of transport beyond the local calling area.

Once Verizon delivers traffic to GNAPs' IP, GNAPs is financially responsible for delivery of this traffic to its switch. GNAPs would need to purchase transport from Verizon or another carrier or self-provision the transport. According to Verizon, its IP concept is no different than the concept of "collection points" discussed by GNAPs' witness Lundquist. Lundquist stated that at the "collection point" a CLEC would aggregate the traffic it receives and send it to a CLEC switch that serves a "wider area" than the collection point.

Under another VGRIP option, if GNAPs chooses not to establish an IP at the Verizon tandem or at the Verizon end office at which GNAPs collocates, the financial demarcation point - in this case a "virtual IP" – would be at the end office serving the Verizon customer who places the call.

Verizon contends that GNAPs' contract proposal impermissibly shifts GNAPs' costs of providing local service to Verizon. While Verizon agrees that

GNAPs is free to minimize its investment in switches, Verizon asserts that GNAPs' proposal to require Verizon to bear the cost of transport to GNAPs' switch must be rejected.

GNAPs' witness Lundquist testified that the additional incremental costs Verizon would incur in transporting traffic to GNAPs' POI were "de minimis." Whether the transport costs are significant or insignificant is not the test for who should bear those costs. But still, GNAPs' cost analysis was flawed. Lundquist's average distance from any particular Verizon wire center to GNAPs' POI was based on the assumption that the volume of traffic from each Verizon wire center was proportional to each access line served from that office. First, the additional cost is not dependent on the number of access lines served by a wire center, but upon the amount of traffic exchanged between the carriers and the number of dedicated transmission paths to GNAPs' physical POI. Second, the number of access lines served by a particular Verizon switch would not directly affect the average distance because Verizon's switches are not connected by access lines, they are connected by interoffice facilities. To calculate the true average distance, Lundquist should have used the facilities that serve the Verizon exchanges, instead of the number of access lines, to determine the weighted average. Third, Verizon states that the unit of measure that Lundquist used in his analysis was incorrect. The incremental transport at issue is the transport that is dedicated to the transmission of traffic between Verizon and GNAPs. Lundquist incorrectly used a common transport application in his estimate of incremental transport costs. Fourth, Lundquist did not account for tandem switching involved in delivering Verizon's traffic over common interoffice facilities to the single POI.

According to Verizon, even using GNAPs' flawed approach, when the correct inputs are applied, the additional costs are not "de minimis." Corrected inputs reveal a 98.4% higher transport cost than what Lundquist calculated.

This Commission has expressed its concern that parties who interconnect with one another do so in an equitable manner. In D.99-09-029, the Commission held that:

> Carriers are entitled to be fairly compensated for the use of their facilities and related processing functions for the actual delivery of a call, irrespective of how a call is rated based on its NXX prefix. (Conclusion of Law 5.)

Although this order addressed the virtual FX (foreign exchange) issue, it is evident that the Commission expects interconnecting parties to fairly compensate one another for the facilities that are used to deliver a call.

Verizon states that the Commission had occasion to address a variation of these issues in an arbitration between Level 3 and Pacific Bell. In the Level 3 FAR, the Commission observed that:

> The parties should not...interpret the arbitrated outcome as finding against other compensation schemes Pacific might subsequently propose for recovery of its transportation costs for carrying traffic to a CLEC's POI. Similarly, it should not be interpreted as permitting parties to avoid their responsibilities to negotiate reasonable compensation for the exchange of various kinds of traffic. (Level 3 FAR at 47.)

In addition, Verizon indicates that its VGRIP proposal is consistent with the FCC's Local Competition Order. When read together, ¶¶ 199 and 209 provide that a CLEC will make efficient decisions about where to interconnect with an ILEC because the CLEC is responsible for the costs of that interconnection.

Verizon indicates that other state commissions—including Florida and North and South Carolina—have rejected proposals similar to that proposed by GNAPs. According to Verizon, these state commissions have recognized that a CLEC's choice to locate one POI per LATA imposes additional transport costs on an ILEC.

Verizon presents the following arguments for adopting its proposed contract language relating to Issues 1 and 2:

- Interconnection §§ 2.2.1.1 and 2.2.1.2: GNAPs' changes to these sections misstate the law. GNAPs would expand the types of traffic that can be carried on interconnection trunks, based on whether the carrier of the traffic imposes a charge for the traffic. The imposition of charges is not the defining criterion for Exchange Access traffic.
- Interconnection § 2.2.5: GNAPs' proposal eliminates essential engineering design requirements. By limiting the amount of traffic at the Verizon tandem, § 2.2.5 ensures the network reliability for the operation of Verizon's common trunk groups and tandem switches and enables Verizon to avoid premature exhaust of its tandem switches. GNAPs offered no explanation on why it should not abide by these standards.
- Interconnection § 3: Because a fiber meet arrangement requires a high degree of joint engineering, provisioning, maintenance and utilization, Verizon has proposed that the parties reach mutual agreement in the form of a memorandum of understanding (MOU) prior to deploying a fiber meet. The MOU would become an addendum to the ICA. Verizon and GNAPs have successfully used MOUs to implement these types of arrangements in other jurisdictions. Verizon states that its approach to fiber meet arrangements is consistent with the FCC's Local Competition Order. As the FCC observed, because each carrier derives benefit from the

mid-span meet, a type of fiber meet arrangement similar to an end point fiber meet, "each party should bear a reasonable portion of the economic cost of the arrangement." In addition, because the mid-span meet requires the ILEC to build new fiber optic facilities to the CLEC's network, the FCC has determined that the parties should mutually determine the distance of this build-out. (Local Competition Order ¶ 553.)

- Interconnection § 5.2.2 and 5.3: GNAPs must order transport facilities separate from interconnection trunks, and GNAPs' unexplained changes to § 5.2.2 interfere with that process. Section 5.3 does not affect GNAPs' ability to select the POI. It addresses the switching system hierarchy and traffic routing on which the parties must rely to properly route traffic. GNAPs' proposed modification conflicts with the Local Exchange Routing Guide (LERG), which is the standard that carriers use to route traffic.
- Interconnection § 2.3: GNAPs' edits are inconsistent with the changes GNAPs proposed to the two-way trunking sections. GNAPs' proposal is inconsistent with how Verizon currently handles one-way trunking with CLECs in California.
- Interconnection § 7: GNAPs makes a number of inappropriate and unexplained edits in § 7 of the ICA.
- Interconnection § 9: Verizon's proposed language allows GNAPs to purchase access toll connecting trunks from Verizon for the transmission and routing of exchange access traffic. When GNAPs asks Verizon for trunks that will connect GNAPs' customers to interexchange carriers (IXCs) through Verizon's tandems, GNAPs is ordering access toll connecting trunks from Verizon. Because those trunks provide an access service, they are properly ordered from Verizon's access tariffs.

Discussion:

The parties do not dispute the fact that GNAPs can designate a single POI per LATA. The conflict arises in addressing Issue 2; namely, whether each carrier should be responsible for transporting traffic on its own side of the POI.

In its Comments on the DAR, Verizon indicates that the DAR is consistent with decisions of the FCC, the federal courts, and this Commission. (Verizon Comments at 2.) In support of its position that the outcome in the DAR on Issue 2 is consistent with FCC orders, Verizon cites to ¶¶ 199, 209 in the Local Competition Order and ¶ 113 in the Intercarrier Compensation NPRM.

The pertinent part of ¶ 199 reads as follows:

> [A] requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit.

This section is not addressing the single POI issue, and a reasonable interpretation could be made that it was referring to costs associated with a specific form of interconnection or interconnection in a particular place. It is a stretch to draw the single POI issue in under the umbrella of ¶ 199 when there is no specific mention of either a single POI or the responsibility for transport of traffic.

In ¶ 209, the FCC discusses the need to develop a minimum list of technically feasible points of interconnection. A portion of that paragraph reads as follows:

> Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC's network at which they wish to deliver traffic. Moreover, because competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection,

> competitors have an incentive to make economically efficient decisions about where to interconnect.

Once again, this paragraph is not on point. There is no dictum relating to transport costs associated with a CLEC selecting a single POI for interconnection. This paragraph simply states that ILECs must be compensated for additional costs incurred in providing interconnection, which relates to how and where the CLEC chooses to interconnect.

As GNAPs points out in its comments on the DAR, the FCC has provided input on the specific issue we are dealing with here, namely whether the CLEC which selects a single POI per LATA should pay transport and tandem switching charges.

In its Comments on the DAR, GNAPs asserts that the determination in the DAR to award Pacific and Verizon transport costs violates 47 CFR § 51.709(b) and § 51.703(b). Section 51.703(b) states: "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network." According to GNAPs, this regulation mandates that the originating carrier must be responsible for the cost of getting its outbound traffic to the interconnecting carrier. GNAPs concludes that the DAR's requirement that GNAPs pay transport and tandem switching charges for carrying traffic across the ILECs' networks to GNAPs' single POI is imposing the burden upon GNAPs of paying for the transport of traffic originating on the ILECs' networks in violation of §§ 51.709(b) and 51.703(b).

Critics of Rule 51.703(b) could say that this section does not apply in this case because it does not take the single POI option into account. However, in its Kansas/Oklahoma 271 Order the FCC clarified that Rule 51.703(b) does apply in those cases involving a single POI. Paragraph 235 reads as follows:

> Finally, we caution SWBT [Southwestern Bell Telephone] from taking what appears to be an expansive and out of context interpretation of findings we made in our *SWBT Texas Order* concerning its obligation to deliver traffic to a competitive LEC's point of interconnection. In our *SWBT Texas Order*, we cited to SWBT's interconnection agreement with MCI-WorldCom to support the proposition that SWBT provided carriers the option of a single point of interconnection. We did not, however, consider the issue of how that choice of interconnection would affect inter-carrier compensation arrangements. Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. [5]

The FCC makes it clear that, even in the case of a CLEC that chooses to have only one POI per LATA, § 51.703(b) applies. If GNAPs elects to have only one POI per LATA, the ILECs cannot require GNAPs to pay transport and tandem switching charges to transport traffic from their customers to GNAPs' POI.

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[5] Memorandum Opinion and Order, In the Matter of Joint Application by SBC Communications Inc., Southwest Bell Telephone "Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwest Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (rel. January 22, 2001), ¶ 235, "Kansas/Oklahoma 271 Order." (footnotes omitted)

In its Intercarrier Compensation NPRM, the FCC recognizes the need to revisit this rule, but at the same time, the FCC reiterates that the current rule applies. Paragraph 112 states:

> Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network. These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier the costs of transport from the POI to the switch serving its end user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport costs to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI. (Intercarrier Compensation NPRM ¶ 112.)

Pacific and Verizon both cite ¶ 113 of the FCC's Intercarrier Compensation NPRM, in support of the proposition that GNAPs should pay transport and tandem switching charges to bring traffic to its single POI. Paragraph 113 does open this issue for comment; however, the FCC has not yet issued an opinion in the Intercarrier Compensation NPRM. The FCC's eventual determination on this issue will govern. In the meantime, the FCC itself in ¶ 112 indicates that its current rules preclude charging carriers for local traffic that originates on the ILEC's network. Therefore, the FCC has made it clear that under its current rules, GNAPs cannot be required to pay transport and tandem switching to the ILECs for transporting traffic to its POI.

Next we need to determine whether the district court cases Verizon cites would overturn the FCC's determinations.

The first case involves a 2001 Third Circuit decision which rejected a requirement by the Pennsylvania state commission that would have required WorldCom to establish more than one POI if only one interconnection point was "necessary." The Court upheld WorldCom's right to establish a single POI and went on to say:

> The PUC's requirement that Worldcom interconnect at these additional points is not consistent with the Act. We will affirm the District Court's decision, rejecting the PUC's interconnection requirements. To the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom.[6]

The Third Circuit closed this section of its opinion with a reference to ¶ 209 of the FCC's Local Competition Order, which was cited above. However, the Court had only the single POI issue before it, not the issue of whether WorldCom should pay transport and tandem switching charges to bring traffic to its single POI. There was no examination of FCC Rule 51.703(b), and no ruling that the FCC's rule violates the Act. In that sense, this is merely dicta, and not a holding by the court.

The second case Verizon cited was a 1998 Oregon case involving U S West Communications, Inc. and three CLECs who appealed the outcome in a § 252 arbitration proceeding to Federal District Court.[7] The issue centered around whether the CLECs could establish a single POI. The situation is much

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[6] MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania, 271 F.3d 491, 518 (3rd Cir., 2001).

[7] U S West Communications, Inc. v. AT&T Communications, Inc., 31 F.Supp.2d839,853 n. 8 (D.Or. 1998).

the same as with the Third Circuit decision cited above. The Court shared the Oregon Commission's concern that requiring all carriers to interconnect within each local calling area could impair the ability of competing carriers to implement more advanced network architectures. The Court closes with the following:

> On the other hand, a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient or exhausts existing network facilities. If USWC believes a particular request for interconnection will impair network facilities or cause it to incur extraordinary costs, it may seek Commission resolution of the matter under the dispute resolution procedures in the contract.

In this case, as was true with the Third Circuit case above, the issue of whether a CLEC that chooses a single POI per LATA should be required to pay transport and tandem switching charges was not before the court. The court did not examine FCC Rule 51.703(b) or make any determination regarding that rule.

We also need to look at this Commission's findings on this issue. In D.99-09-029, this Commission determined that carriers should be compensated for the use of their networks. The Commission determined that carriers should negotiate the appropriate compensation in their interconnection negotiations. I note that the Commission made its determination in 1999, while the FCC's clarifying language relating to FCC Rule 51.703(b) came two years later--in 2001. This Commission has not had an opportunity to review its determination in light of the FCC's later rulings. The Commission's determination in D.99-09-029 is at odds with the FCC's language in both the Kansas/Oklahoma 271 Order and the Intercarrier Compensation NPRM which I cited above. In an arbitration under

Section 252(b), federal law and regulations have precedence. The FCC's Rule 51.703(b) is in effect and governs the outcome here.

I have adopted GNAPs' position regarding Issue 2, which also helps to resolve the questions I posed in the DAR relating to Verizon's IPs (interconnection points). In Interconnection Attachment § 2.1.2, I adopt GNAPs' proposed language which states that Verizon shall treat GNAPs' IP as Verizon's relevant IP, and GNAPs will treat its POI as GNAPs' relevant IP. Since the IP is the point where financial responsibility for traffic passes from one carrier to another, that statement is consistent with my finding that each carrier should be responsible for traffic on its own side of the POI.

In the following section, I dispose of all the disputed contract language in the ICA between GNAPs and Pacific, relating to Issues 1 and 2:

- GT&C § 1.1.98: Pacific's proposed definition of the POI, which is clear and concise, is adopted.
- GT&C § 1.2.4: Pacific's proposed definition is adopted. 47 C.F.R. § 51.321 does not give GNAPs the unilateral right to determine which interconnection points are technically feasible.
- NIM § 1.11: GNAPs' language is adopted. Each LEC is responsible for expenses relating to facilities on its side of the POI.
- NIM §§ 2-A, 2-B, 2-C: In its Comments on the DAR, Pacific indicates that the DAR overlooks these sections of Pacific's proposed ICA, which were included in Pacific's Supplemental Filing of February 1, 2002. Sections 2-A, 2-B, and 2-C govern financial responsibility for calls transported within the same calling area as the POI and between different calling areas. Pacific's proposed language is rejected. It is inconsistent with my determination that GNAPs cannot be required to pay for transport of traffic on Pacific's side of the POI.

- NIM § 2.1: Pacific's proposed language is adopted. Pacific's language includes the fact that GNAPs may have a single POI per LATA.
- NIM § 2.2 GNAPs' proposed language is adopted. That language reflects the fact that GNAPs is not required to have more than one POI per LATA, and that parties will operate with the single POI until the parties agree to establish additional POIs.
- NIM § 2.3: GNAPs' proposed language is adopted. It simply says the parties will meet as often as necessary to negotiate the number and location of new POIs.
- NIM § 2.4: GNAPs' proposed language is adopted. It reflects the fact that each party is responsible for the facilities on its side of the POI and for the costs of the transport facility to the POI.
- NIM §§ 3.1 and 3.2: GNAPs' proposed language is adopted. If GNAPs does not intend to use physical or virtual collocation to interconnect with Pacific, there is no reason to have the provision in the ICA.
- NIM § 3.4.1: Pacific's proposed language is adopted, with modification. While Pacific is correct that GNAPs cannot unilaterally determine whether a meet point is technically feasible, that point does not have to be agreed to by the parties. GNAPs does have the unilateral right to select a POI, unless the point is deemed technically infeasible.
- NIM §§ 3.4.2 and 3.4.3: Pacific's proposed language is adopted. GNAPs does not indicate the reasons for its objections to the language.
- NIM § 3.4.7.1: GNAPs' proposed language is adopted. Pacific attempts to interject a statement that the POI will be at a mutually agreeable location, with the intent of a 50/50 share in the cost of the facilities. GNAPs has the right to select the POI, subject only to technical feasibility issues, and each carrier will pay the cost of facilities on its side of the POI. In its Comments on the

DAR, Pacific states that this section should be deleted since GNAPs has said it will not use that method of interconnection. Pacific's suggestion is rejected. GNAPs proposed changes to this section, and so presumably GNAPs intends to use that form of interconnection during the life of the ICA.

- NIM § 4.1: Pacific's proposed language is adopted. In order for the parties to interconnect, certain information needs to be exchanged. GNAPs takes exception to providing forecasts, but those forecasts, which are non-binding, are necessary to determine the trunk facilities needed to exchange traffic.
- NIM §§ 4.2, 4.4, 4.5: Pacific's language is adopted. GNAPs says the requirements are burdensome, but does not say why. The three sections include sound operational requirements for the parties to work together to implement an interconnection arrangement. A facility handoff point must be determined and trunk facilities must be planned based on the trunk forecasts.
- NIM § 5.2: GNAPs' proposed language is adopted. As Pacific states, the provision GNAPs wants deleted does not apply to Pacific, only to SBC-Ameritech and SNET. There is no need to have that language in the ICA.
- NIM § 5.6: Pacific's proposed deletion is adopted. The section refers to the fact that facilities could be provided out of a tariff.

In the following section, I dispose of all the disputed contract language in the ICA between GNAPs and Verizon, relating to Issues 1 and 2:

- GT&C Glossary § 2.66: Verizon's proposed definition is adopted. GNAPs' reference to the FCC's definition for the NID has nothing to do with the definition of a POI.
- GT&C Glossary § 2.95: Verizon's more detailed definition is adopted. It is clearer than GNAPs' definition.

- Interconnection § 2.1.1: GNAPs' proposed language is adopted. GNAPs is entitled to have only one POI per LATA, and each party is responsible for transporting traffic originating on its network to the POI.
- Interconnection § 2.1.2: GNAPs' proposed language, which describes the relationship between the POI and Verizon's IPs, is adopted. GNAPs indicates that the IP will be located at the POI. This is appropriate since financial responsibility passes from one carrier to the other at the POI.
- Interconnection §§ 2.2.1.1, 2.2.1.2: Verizon's proposed language is adopted. Toll traffic does not have to be billed as a separate charge on customers' bills.
- Interconnection § 2.2.3: GNAPs' proposed language is adopted. GNAPs has the right to determine whether it wants to use one-way or two-way trunking. The FCC established this right in its Local Competition Order. 47 C.F.R. § 51.305(f) states: "If technically feasible, an incumbent LEC shall provide two-way trunking upon request."
- Interconnection § 2.2.5: In its Comments on the DAR, Verizon states that setting a limit on the number of tandem interconnection trunks will ensure network reliability and avoid premature exhaust of Verizon's tandem switches. Verizon indicates that it has this arrangement with other CLECs in California. Verizon's arguments are compelling so Verizon's position is adopted.
- Interconnection § 2.3: Verizon's proposed language is adopted with modification. Verizon's language reflects the fact that each party must provide transport to get the traffic to the IP (which is the same thing as the POI). GNAPs' language in § 2.3.1.1 is adopted in that collocation with GNAPs is at GNAPs' sole discretion (*See* Issue 12).

- Interconnection § 2.4.3: GNAPs' proposed language is adopted. GNAPs has the authority to designate the site for the POI, subject only to technical feasibility.
- Interconnection § 3: Verizon's proposed language is adopted. It is consistent with the FCC's discussion in ¶ 553 of the Local Competition Order.
- Interconnection §§ 5.2.2 and 5.3: Verizon's proposed language in § 5.2.2 is rejected. It requires GNAPs to purchase facilities at a particular Verizon central office, which is on Verizon's side of the POI. GNAPs is not required to purchase facilities on Verizon's side of the POI. Verizon's proposed language in § 5.3 is adopted. As Verizon says, § 5.3 does not affect GNAPs' ability to select the POI; it simply lists Verizon's switching hierarchy.
- Interconnection § 7: GNAPs' proposed language is adopted. It is consistent with my determination that GNAPs is not required to have more than one IP, which is located at the POI.
- Interconnection § 9.2.2: Verizon's position is adopted. If GNAPs plans to route traffic to IXCs, it must have access toll connecting trunks in place.